**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928**

**WP(C).No. 5652 of 2007(W)**

**----------**

**AGAINST THE ORDER IN EP 359/2005 IN OS.885/1960 of II ADDL.M.C.,TRIVANDRUM**

**.....**

**PETITIONERS: JD.NO.3 & 4 IN OS 885/1960,II ADDL.M.C.,TVM)**

---

1. **KESAVAN HARIDAS, S/O. KESAVAN, AGED 71, (ATTINPURAM HOUSE, PONNAMCHUNDU ROAD, VITHURA,AS IN THE ORDER OF THE COURT BELOW), KOTTAIKULAM, ATTUPURATHUTHOPPU VEEDU, ARYANADU, NEDUMANGAD, THIRUVANANTHAPURAM DISTRICT.**

2. **L.HARIDAS, S/O. LAKSHMI AND KESAVAN, AGED 65, (ATTINPURAM HOUSE, PONNAMCHUNDU ROAD, VITHURA AS IN THE ORDER OF THE COURT BELOW), KOTTAIKULAM, ATTUPURATHUTHOPPU VEEDU, ARYANADU, NEDUMANGADU, THIRUVANANTHAPURAM DISTRICT.**

**BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)**
**SRI.K.JAYAKUMAR**
**SRI.P.B.KRISHNAN**
**SRI.R.SURAJ KUMAR**

**RESPONDENTS: DECREE HOLDERS NO.22,18,21 & OTHERS IN OS 885/60, II ADDL.M.C., TRIVANDRUM.**

---

1. **EDWIN PERIERA, T.C.NO.10/1742(3), KUTHIRAKATTU LANE, VATTIYOORKAVU, THIRUVANANTHAPURAM.**

2. **MARY MARGRET, T.C.NO.1635, KAWDIAR, THIRUVANANTHAPURAM.**

3. **REETA JACOB, T.C.NO.13/170(A), NALUMUKKU, PETTAH, THIRUVANANTHAPURAM.**

4. **CHARLET CHRISTY, JOSE VILLA, KUNNUKUZHY, THIRUVANANTHAPURAM.**

**..2/-**

5. MELVIN L. FERNANDEZ,
PATTANIKADI BANGLOW, KANNAMOOLA,
THIRUVANANTHAPURAM.

6. ANTHONY L. FERNANDEZ,
PATTANIKADI BANGLOW, KANNAMOOLA,
THIRUVANANTHAPURAM.

7. JANATT P. DIKSON,
PATTANIKADI BANGLOW, KANNAMOOLA,
THIRUVANANTHAPURAM.

8. RITA K. LOPAS,
PATTANIKADI BANGLOW, KANNAMOOLA,
THIRUVANANTHAPURAM.

9. MARY S. GOMAS, IN -DO- -DO-
NOW AT 104, SERAMAGOOR GARDEN, SINGAPORE-19.

10. JENSY J. MIRANDA, IN -DO- -DO-
NOW AT 131-K361-383-F, CLAMANT AVC-2,
SINGAPORE-5.

11. LYRA L. FERNANDEZ, IN -DO- -DO-
NOW AT 122A BLK 59, COMMON WEALTH DIVISION,
SINGAPORE-3.

12. ELIZABETH GOMEZ, IN -DO- -DO-
NOW AT PATTANIPARAMBIL, THOOYAM, KOLLAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.P.BALACHANDRAN, J.**

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

W.P.(C)NO.5652 OF 2007

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Dated this the 20th day of February 2007

**JUDGMENT**

Petitioners are judgment debtors 3 and 4 in O.S.885/1960 on the file of the second Additional Munsiff's Court, Thiruvananthapuram. They challenge Ext.P6 order of delivery passed after adjudication of subsequent improvements and directing that delivery will be effected on deposit of value of subsequent improvements amounting to Rs.5,38,269/50. Decree holders in the said suit are the respondents.

Advocate Sri.Praveen Vyasan has entered appearance on behalf of first respondent and he has filed a detailed counter. It is submitted that first respondent has filed counter on behalf of the other respondents as well. The respondents filed E.P. for effecting delivery on deposit of subsequent value of improvements made after the final decree by the judgment debtors after deducting mesne profits due to the decree holder as found by the court in the final decree. The suit is one filed as early as in 1960 and the final decree has become final long back. As per the final decree the plaintiff/decree holder has to remit

Rs.41,33,508/70 towards value of improvements as they had already deposited the mortgage amount and Tharavila for Puthuval Registry which was fixed at Rs.3,545/-. The subsequent improvements after the date of decree was got assessed through a Commission and the Commissioner submitted report fixing the value of subsequent improvements at Rs.13,00,000/- in all. The execution court after considering the objections of the decree holder and judgment debtor fixed the amount due to the judgment debtors by way of value of improvements at Rs.5,38,269/50. This rating down of the subsequent improvements was for the reason that the Commissioner had not effected proper deductions towards droppings; towards cost of cultivation and tax. The court allowed 1/4$^{th}$ deduction towards droppings and 1/4$^{th}$ towards cost of cultivation and tax in relation to the coconut and fixed the price of coconut at Rs.5 per nut as against the value shown by the Commissioner at Rs.8 per nut. Thus value of improvements for 75 coconut trees was fixed at Rs.2,27,812/50 towards subsequent improvements. The next dispute was in relation to liability for payment of improvements

for construction of piggery farm and a septic tank constructed as part of the said Farm as reported by the Commissioner. The court below found that the piggery farm in the scheduled property was constructed by Mohandas, the son of 5th defendant who is the first judgment debtor in the E.P. and that the first judgment debtor himself filed affidavit to that effect. Considering the decision of this court in **Abdulla Haji v. Rugmini Amma [1998 (1) KLT short note 50]** it was held by the execution court that a person getting into possession of property pending litigation is not entitled to cut and remove improvements or to claim compensation for improvements and that therefore neither the said Mohandas nor the first judgment debtor is entitled to claim any value towards cost of construction of piggery farm reported by the Commissioner. In another respect also I find that cost of construction of piggery farm is not liable to be paid by way of value of improvements as it is not common in our country to run piggery except by those who are interested in doing that. It is not an improvement unless the decree holder is also interested in running a piggery farm. No

such evidence is brought in and the finding of the court below refusing to award compensation for the piggery farm as improvements has only to be upheld. The execution court after deducting the aforesaid amount has fixed the value of subsequent improvements at Rs.5,38,269/50. The said amount was found to be due to defendants 4, 5, 7 to 10 and 39 to 44. Judgment debtors other than judgment debtors 3 and 4 have not taken up the matter till now. Though delivery is ordered to be effected on 21.2.2007 obviously they have no grievance in the matter. The execution court has ordered the decree holders to deposit Rs.5,38,269/50 being the value of improvements made after the final decree by the judgment debtors after deducting mesne profits due to them under the final decree which is at the rate of Rs.915 per day. The decree holders have deposited the entire amount of Rs.5,38,269/50 on 17.2.2007 without deducting any amount whatsoever, over and above the amount of Rs.41,33,508/70 towards value of improvements assessed prior to the final decree and Rs.3,545 towards mortgage amount already deposited. Thus the charge over the scheduled property

for the judgment debtors for the mortgage amount and value of improvements no longer exists.

I find absolutely no merit in the objections raised to Ext.P6 order passed by the court below rating down the value of improvements in relation to 75 coconut trees and refusing to award any amount by way of compensation for the piggery farm constructed by Mohandas the son of the first judgment debtor. This writ petition in the circumstances is devoid of merit and is dismissed.

**K.P.BALACHANDRAN, JUDGE**

jes